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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FORE STARS, Ltd, SEVENTY ACRES, LLC,
a Nevada limited liability company, DOE
INDIVIDUALS I through X, DOE
CORPORATIONS I through X, DOE LIMITED
LIABILITY COMPANIES I through X,

Plaintiff,

vs.

CITY OF LAS VEGAS, political subdivision of
the State of Nevada, THE EIGHTH JUDICIAL
DISTRICT COURT, County of Clark, State of
Nevada, DEPARTMENT 24 (the
HONORABLE JIM CROCKETT, DISTRICT
COURT JUDGE, IN HIS OFFICIAL
CAPACITY), ROE government entitles I
through X. ROE Corporations I through X.

CASE NO.

**THE CITY OF LAS VEGAS' PETITION
FOR REMOVAL OF CIVIL ACTION**

(Clark County District Court, Case
No. A-18-773268-C)

ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through
X,

Defendants.

**TO: THE CLERK OF THE ABOVE-ENTITLED COURT, THE PARTIES, AND ALL
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, defendant City of Las Vegas (the “City”) files this Petition for Removal of Civil Action with respect to the above captioned case, which was filed and currently is pending in the District Court of Clark County, State of Nevada, Case No. A-18-773268-C (the “State Court Action”). In support of its Petition for Removal of Civil Action, the City states as follows:

THE ACTION

1. On April 20, 2018, plaintiffs Fore Stars, Ltd. And Seventy Acres, LLC (collectively, the “Developer”) filed their Complaint for Declaratory Relief and Injunctive Relief and in Inverse Condemnation (“Complaint”) against the City and the Eighth Judicial District Court for the County of Clark, State of Nevada, Department 24 (the Honorable Jim Crockett, District Court Judge) (“State of Nevada”) (collectively “Defendants”). *See* Complaint attached hereto as **Exhibit A.**

2. The Complaint alleges causes of action for (1) Declaratory Relief; (2) Preliminary Injunction; (3) Categorical Taking; (4) Penn Central Regulatory Taking; (5) Regulatory Per Se Taking; (6) Nonregulatory Taking; (7) Judicial Taking; (8) Temporary Taking; and (9) Violation of Due Process Rights. *Id.*

3. The Developer claims that the City’s alleged taking was in violation of the United States Constitution, the Nevada State Constitution and the Nevada Revised Statutes. *Id.*, ¶¶ 67, 84, 92, 101, 109 and 115.

4. For its violation of due process cause of action, the Developer claims that the alleged violation is brought under the United States Constitution and the Nevada State Constitution. *Id.*, ¶ 123.

5. The Developer also alleges that the “City and the Crockett Court are also subject to all of the provisions of the Just Compensation Clause of the United States Constitution.” *Id.*, ¶ 2; *see also* ¶¶ 39, 41, 42, 66-68, 83-85, 91-93, 100-102, 108-110 and 113-16 (alleging that the City has not paid just compensation for the alleged taking). For their relief, Developer seeks, among other things, “[a]n award of just compensation. . . for the taking.” *Id.* at 18:21.

6. In addition to the Developer’s Complaint at **Exhibit A**, **Exhibit B** contains all prior pleadings, process and orders that have been served on the City and/or the State of Nevada prior to the filing of this Petition for Removal of Civil Action.

JURISDICTION AND VENUE

7. On June 21, 2019, the United States Supreme Court decided *Knick v. Township of Scott, Pennsylvania, et al.*, 139 S.Ct. 2162 (2019). *Knick* overruled, in part, *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) and held that a property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it and, therefore, may bring his claim in federal court under 42 U.S.C. §1983 at the time of the alleged taking. *Knick*, 139 S.Ct. at 2167-8. In other words, *Knick* overturned the Supreme Court’s prior ruling that a property owners’ state law remedies must be exhausted before a takings claims could be filed in federal court.

8. Based on *Knick*, this Court has original jurisdiction under 28 U.S.C. § 1331. “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The Developer’s Complaint seeks just compensation for the City’s alleged taking under the United States Constitution; therefore, pursuant to 28 U.S.C. § 1331, the Fifth Amendment of the United States Constitution and the United States Supreme Court’s decision in *Knick*, this Court has jurisdiction over this action.

9. This action may be removed to this Court pursuant to 28 U.S.C. § 1441 as any action commenced in state court is removable if it might have been brought originally in federal court. *See* 28 U.S.C. § 1441(a); *see also Exxon Mobil Corp. v. Allapattach Servs., Inc.*, 545 U.S. 546, 563-64 (2005) (“[A] district court has original jurisdiction of a civil action for purposes of

1 section 1441(a) as long as it has original jurisdiction over a subset of claims constituting the
2 action”).

3 10. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants consent and join in this
4 removal and the State of Nevada shall be filing its consent and/or joinder with this Court.

5 11. The United States Supreme Court entered judgment in *Knick* on July 23, 2019. *See*
6 United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate
7 collectively attached as **Exhibit C**. Therefore, this Removal is timely in that the City has sought
8 removal within 30 days of the final judgment authorizing removal of this matter. *See* 28 U.S.C. §
9 1446(b)(3) (“[I]f the case stated by the initial pleading is not removable, a notice of removal may
10 be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy
11 of an amended pleading, motion, order or other paper from which it may first be ascertained that
12 the case is one which is or has become removable.”).

13 12. To the extent the Complaint alleges any state causes of action or other non-federal
14 claims, this Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. §
15 1367 because those claims arise out of the same operative facts as the Developer’s federal claims
16 and “form part of the same case or controversy under Article III of the United States Constitution.”
17 28 U.S.C. § 1367(a).

18 13. This Court is in the judicial district and division embracing the place where the
19 state court action was brought and is pending. Thus, this Court is the proper district court to which
20 this case should be removed. *See* 28 U.S.C. §§ 1441 and 1446(a).

21 **COMPLIANCE WITH 28 U.S.C. § 1446(d)**

22 14. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Petition for
23 Removal of Civil Action will be promptly served on the Developer and will be filed with the Clerk
24 of the District Court of the State of Nevada, Clark County, in the State Court Action.

25 ...

26 ...

27 ...

28 ...

PRAYER FOR REMOVAL

WHEREFORE, the City prays that the State Court Action be removed to the United States District Court for the District of Nevada.

DATED this 22nd day of August, 2019.

McDONALD CARANO LLP

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EXHIBIT LIST

Complaint for Declaratory Relief and Injunctive Relief and in Inverse Condemnation	Exhibit A
State Court Action Prior Pleadings, Process and Orders	Exhibit B
United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate	Exhibit C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of August, 2019, I caused a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' PETITION FOR REMOVAL OF CIVIL ACTION** to be electronically filed with the Clerk of the Court by using CM/ECF service and serving on all parties of record via U.S. Mail as follows:

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/s/ Jelena Jovanovic
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